

DOCKET FILE COPY ORIGINAL

FLEISCHMAN AND WALSH, L. L. P.

ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION
1400 SIXTEENTH STREET, N. W.
WASHINGTON, D. C. 20036
TEL (202) 939-7900 FAX (202) 745-0916
INTERNET fw@fw-law.com

RECEIVED

JUL 25 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

AARON I. FLEISCHMAN

FLEISCHMAN AND WALSH, P. C.
CHARLES S. WALSH
ARTHUR H. HARDING
STUART F. FELDSTEIN
RICHARD RUBIN
JEFFRY L. HARDIN
STEPHEN A. BOUCHARD
R. BRUCE BECKNER
HOWARD S. SHAPIRO
CHRISTOPHER G. WOOD
SETH A. DAVIDSON
MITCHELL F. BRECHER
JAMES F. MORIARTY
MATTHEW D. EMMER
HOWARD A. TOPEL

JILL KLEPPE McCLELLAND
REGINA FAMIGLIETTI PACE
TERRI B. NATOLI *
RHETT D. WORKMAN
CRAIG A. GILLEY
MARK F. VILARDO
PETER J. BARRETT
KIMBERLY A. KELLY
ROBERT E. STUP, JR. **
SCOTT H. KESSLER ***
RUBY D. CEASER
ANDREW M. FRIEDMAN
DEBRA A. McGUIRE
JOSHUA W. RESNIK ****
STEPHEN E. HOLSTEN

July 25, 1997

* VA BAR ONLY
** PA BAR ONLY
*** NY AND NJ BARS ONLY
**** MD BAR ONLY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

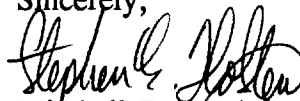
Re: In the Matter of MCI Telecommunications Corporation Billing
and Collection Services Provided By Local Exchange Carriers for
Non-Subscribed Interexchange Services -- Rulemaking No. 9108

Dear Mr. Caton:

Transmitted herewith for filing, is an original and four copies of the "Comments of Digital Network Services, Inc." regarding the above-referenced matter.

If there are any questions regarding this matter, please communicate with the undersigned.

Sincerely,



Mitchell F. Brecher

Stephen E. Holsten

Counsel to Digital Network Services, Inc.

Enclosures

55315.1/0863

No. of Copies rec'd
List A B C D E

0+4

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

JUL 25 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

MCI TELECOMMUNICATIONS CORPORATION)

Billing and Collection Services Provided)

By Local Exchange Carriers for Non-Subscribed)

Interexchange Services)

Rulemaking No. 9108

COMMENTS OF DIGITAL NETWORK SERVICES, INC.

Digital Network Services, Inc. ("DNSI"), by its attorneys, hereby submits its comments in the above-captioned matter and states as follows:

STATEMENT OF INTEREST

DNSI is an interexchange carrier headquartered at DeSoto, Texas. Its service offerings include operator-assisted calling services (*e.g.*, calling card, third party-billed, and collect calls billed to entities other than the originating telephone account) as well as direct-dialed calls, including casual calling traffic (*i.e.*, calls originated by the calling party dialing a carrier's 10XXX code). A significant portion of DNSI's service is provided to customers who do not use DNSI service on a presubscribed basis and who do not have established billing account relationships with DNSI. Because DNSI does not have preexisting customer accounts with those non-subscribed customers, DNSI is reliant upon the billing and collection services of local exchange carriers ("LECs"). DNSI acquires LEC billing and collection services through its contractual relationships with billing and collection clearinghouses who enter into agreements with LECs and aggregate the call records of DNSI and other carriers for submission to those

LECs. Like other competitive interexchange carriers ("IXCs") who have been made aware of plans by certain LECs to limit or possibly eliminate their provision of billing and collection services, either directly to IXCs or through billing clearinghouses, DNSI is concerned about the anticompetitive consequences which would inevitably result from such actions. Accordingly, for reasons explained in these comments, DNSI urges the Commission to take such action as is necessary to ensure that LEC billing and collection services remain available to IXCs.

DNSI SUPPORTS THE MCI PETITION

On May 19, 1997, MCI Telecommunications Corporation ("MCI") filed with the Commission a petition for rulemaking.¹ The MCI petition was filed in conjunction with MCI's comments on the America's Carriers Telecommunication Association ("ACTA") petition for declaratory ruling regarding largely the same issues.² DNSI, a member of ACTA, filed comments in support of the ACTA petition. Although DNSI's primary arguments with respect to LEC billing have been expressed in that parallel proceeding, DNSI will take this opportunity afforded by the Commission to reassert its strongly-held position that LECs should be required to provide essential billing and collection services to requesting IXCs that offer non-subscribed services, including services which are accessed through casual calling methods.

1. Casual Calling Service Provides Important Benefits in the Public Interest

DNSI concurs with MCI that the non-subscribed services market serves the public interest

¹See Public Notice - MCI Telecommunications Corporation Files Petition for Rulemaking Regarding Local Exchange Company Requirements for Billing and Collection Services, Rulemaking No. 9108, DA 97-1328, released June 25, 1997.

²See Public Notice - America's Carriers Telecommunications Association Files Petition for Declaratory Ruling Regarding Access To Casual Caller Customer Billing Information, File No. ENF 97-04 [since corrected to File No. ENF 97-05], DA 97-825, released April 18, 1997.

by promoting greater access to long distance services, consumer choice, competition, and network reliability.³ These public benefits further the vision of Congress in passing the Telecommunications Act of 1996 ("1996 Act"), and the mission of the Commission in implementing the 1996 Act. 10XXX calling exerts downward pressure on long distance calling rates by introducing more competition to the marketplace. 10XXX calling allows broader consumer choice as callers may "dial around" their presubscribed IXC, if they have one, and thereby sample the services of competing IXCs, take advantage of special rate offerings, or gain access to interexchange services when their presubscribed carrier is experiencing network difficulties.

In many instances, casual calling may be the only way for lower income consumers to access long distance service at all. Lower income consumers often do not have home telephone service and therefore do not have a presubscribed IXC. Casual calling thus serves an important universal service function, which is borne out by DNSI's experience that callers using such services often include the economically disadvantaged, recent immigrants, and transient portions of the population. The extent of the public benefit gained by casual calling may be quantified, with MCI estimating that \$1.5 billion in 10XXX traffic was carried in 1996 by providers other than AT&T, MCI and Sprint.⁴

2. Casual Calling Service is Not Feasible Without LEC Billing and Collection Services

DNSI also agrees with MCI that LEC-provided billing and collection services are

³MCI Petition at 3-5.

⁴Id. at 4.

necessary for the significant public benefits of non-subscribed services to be possible.⁵ DNSI is a prime example of a company that would be severely impaired if LEC billing services were not available. As noted above, DNSI relies upon LEC billing and collection services because many, if not most, of the persons utilizing DNSI's services do not have preexisting billing relationships with DNSI. For DNSI to bill each such customer directly would be economically prohibitive; it would not only be prohibitively expensive to obtain and manage the necessary billing data, but the collection of accounts would require DNSI to establish its own nationwide collection network.

Most casual call service customers make few (often only one) call per billing cycle. The cost of purchasing accurate and up-to-date Billing Name and Address ("BNA") information, creating an invoice, mailing the invoice, and processing the return payment would often exceed the cost of the call itself. Like many small IXC's, DNSI therefore contracts with intermediary billing and collection clearinghouses who enter into billing and collection services agreements with LECs and aggregate the call records of DNSI and other carriers for submission to those LECs. It would even be prohibitively expensive for DNSI to purchase billing and collection services directly from a LEC rather than through a clearinghouse which can use economies of scale to negotiate better rates with LECs and to cost-effectively bill and collect small call volumes over a large number of IXC's and information service providers. DNSI's viability as a competitive IXC depends upon the availability of LEC billing and collection service to DNSI and the clearinghouses with which it contracts.

⁵Id. at 6-10.

3. Times Have Changed Since The 1986 Detariffing Decision, and Today the Commission Should Require LECs to Provide Billing and Collection Services to Requesting IXC's that Offer Casual Calling
 - a. The ability of LECs to enter the long distance market gives them incentive to deny billing and collection services to competing IXC's

In 1986, the Commission elected to detariff LEC billing and collection services on the bases that LEC billing and collection is not a communications common carrier service but rather is a financial and administrative service, and that billing for IXC services had the potential to become competitive.⁶ At the time of the Commission's billing and collection decision, neither operator-assisted calling services (including calls billed to LEC joint use calling cards, collect and third party-billed calls) or casual calling through use of 10XXX dialing were subject to significant competition. Moreover, at that time, the largest LECs, *i.e.*, the Bell Operating Companies ("BOCs") and the GTE Telephone Companies, which among them served more than ninety percent of the nation's access lines, were required by their respective consent decrees to offer billing and collection to IXC's on a nondiscriminatory basis if they offered that service to any IXC.⁷ Therefore, for all practical purposes, LEC billing and collection was available to IXC's, irrespective of the Commission's decision to detariff that service.

⁶Detariffing of Billing and Collection Services, 102 FCC2d 1150, *recon. den.*, 1 FCC Rcd 445 (1986) ("1986 Billing and Collection Detariffing Order"). It should be noted that throughout the eleven year period since LEC billing and collection was "detariffed," incumbent LECs have continued to recover substantial sums of money from regulated ratepayers through access charge rate elements comprised of billing and collection costs. These amounts have been estimated to be \$124 million per year! Access Charge Reform, etc., First Report and Order, FCC 97-158, released May 16, 1997, ¶ 326.

⁷See United States v. American Telephone and Telegraph Company, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. U.S.*, 460 U.S. 1001 (1983); United States v. GTE Corporation, 603 F. Supp. 730 (D.D.C. 1984).

Circumstances have changed since 1986. Today, hundreds of IXC's offer services to customers on a non-subscribed basis and rely upon LEC billing of those services; the consent decree obligations on the BOCs and GTE companies have been superseded by the 1996 Act; and, most importantly, those companies, as well as other LECs, already are providing interexchange services (in the case of the GTE companies), or, in the case of the BOCs, soon will be seeking Commission authority to do so on an in-region basis pursuant to Section 271 of the Communications Act. Thus, in addition to no longer being obligated to provide essential billing services to IXC's, those companies and other LECs have significant incentives not to make billing services available to their current or prospective IXC competitors. Even if billing and collection services are not denied outright to IXC competitors, LECs now have an incentive to give their long distance affiliates "sweetheart deals", *i.e.*, provide service on preferential terms. The Commission must not allow the LECs to engage in such anticompetitive and discriminatory behavior.

b. The billing and collection market is still not competitive

In rendering its detariffing decision in 1986, the Commission stated that "significant competition exists and will continue to develop" in the billing and collection services market, noting that competition includes third party vendors as well as the IXC's themselves.⁸ Contrary to the Commission's assessment and prediction, however, the market for billing and collection services is still not effectively competitive. While direct billing is expensive even for large IXC's, direct billing for non-subscribed services is impossible: MCI, the second largest IXC,

⁸1986 Billing and Collection Detariffing Order at ¶ 37.

estimates that less than half of direct invoices for non-subscribed services would be profitable.⁹ For DNSI, tiny in comparison to MCI, direct billing of either presubscribed or non-subscribed services is economically unthinkable. Moreover, DNSI knows of no third party vendor which could provide the billing and collection services it requires other than the clearinghouse intermediaries which ultimately depend on LEC billing and collection. Effective competition means that there are a number of competitors and no one firm has the majority of the market. LECs still maintain what is essentially a monopoly for billing and collection services. DNSI concurs with MCI that a competitive third party billing market does not exist for non-subscribed services, and that billing partnerships with non-carriers remain at the "theoretical" stage.¹⁰

Effective competition also requires that billing and collection service must be homogeneous. As long as the LECs retain the ability to disconnect local service to end users who have not paid their telephone bills for either local or toll service, the LECs enjoy a great marketing and service advantage over any competitor. As collection is particularly difficult for non-subscribed services, this ability is crucial for the billing and collection service utilized by a casual calling provider. DNSI believes that eleven years of experience have refuted the prediction offered by the Commission in the 1986 detariffing decision, that local cut-off ability would not be an insurmountable competitive advantage for LECs.¹¹

⁹MCI Petition at 7. MCI further notes that it would suffer a "significant loss in revenue" for the majority of its invoices for the enormously popular 1-800-COLLECT service if it used direct billing. *Id.*

¹⁰*Id.* at 8-9.

¹¹1986 Billing and Collection Detariffing Order at ¶ 38.

c. Only LECs can provide BNA in accurate, up-to-date form

The LECs' competitive stranglehold on billing and collection services also derives from its custody over BNA information which is a byproduct of its local exchange monopoly. The Commission itself acknowledged that with respect to joint use calling cards, "only LECs can provide BNA in accurate, up-to-date form."¹² While the Commission last year clarified that LECs are required to provide BNA information under tariff with respect to calling card, collect, and third party calls and not to 10XXX calls, it made the point that it had not contemplated adopting such rules for 10XXX calls in its rulemaking nor had any commenters advocated such a rule change at that time.¹³ The Commission left the door open to consider requirements for 10XXX calling if it was brought before the Commission in a rulemaking as it is now. Significantly, in the BNA Third Reconsideration Order, the Commission concluded that LEC BNA is acquired by the LEC as an incident to its provision of common carrier service, that it is necessary in order for IXC's completing joint use calling card, collect and third party-billed calls to receive revenues for those calls, and that BNA therefore should be provided on a common carrier basis. Those conclusions are no less true for 10XXX and other forms of casual calling, then they are with respect to operator-assisted calling. Accordingly, for the very reasons that the Commission required LECs to provide billing information in that proceeding, the

¹²Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Second Report and Order, 8 FCC Rcd 4478, ¶ 20 (1993) ("BNA Second Order"), *recon.*, 8 FCC Rcd. 6393 (1993), *further recon.*, 8 FCC Rcd. 8798 (1993), *further recon.* 11 FCC Rcd 6835 (1996), *affirmed sub nom. AT&T Corp. v. FCC*, 113 F.3d 225 (D.C. Cir. 1997).

¹³Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Third Order on Reconsideration, 11 FCC Rcd 6835 (1996) ("BNA Third Reconsideration Order").

Commission should clarify that BNA must also be made available by LECs for all IXC telecommunications services charged to customer telephone accounts established and maintained by LECs.

The incumbent LECs are the only telecommunications service providers which have existing billing relationships with virtually every consumer (and in almost all locations, with every residential telephone service consumer). Given these existing billing relationships, the continued dependence on LEC billing for non-subscribed services, and the LECs' new incentives to eliminate provision of billing and collection to their existing and prospective competitors, it is imperative that the Commission promptly establish or clarify LEC obligations to make billing and collection available to casual calling providers.

4. The Commission Must Affirmatively Require LECs to Provide Billing and Collection Services Until the Market for Such Services is Competitive, and Non-Discrimination Alone is Not Enough

DNSI agrees with MCI that the Commission must take action to protect the non-subscribed services market, but does not believe MCI's requests go far enough. Even though the Commission detariffed billing and collection in 1986, it specifically retained jurisdiction over that service under Title I, which it reserved the right to invoke as justified.¹⁴ Section 4(i) of the Communications Act empowers the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions."¹⁵ As the Commission's predictions regarding competition in the billing and collection market have not yet panned out, and as the LECs now have strong

¹⁴1986 Billing and Collection Detariffing Order at ¶¶ 35-38.

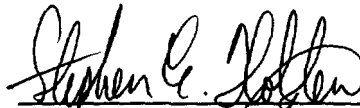
¹⁵47 U.S.C. § 154(i).

incentives to deny competing IXCs billing and collection services, the Commission should invoke this jurisdiction, or other jurisdiction it may have, to affirmatively require LECs to provide billing and collection services to requesting IXCs that offer casual calling service.

DNSI concurs with MCI that a permanent rule may not be necessary, but rather a transitional safeguard that could be removed when casual calling service providers are no longer dependent upon LEC-provided billing and collection.¹⁶ While MCI only requests a non-discrimination rule that would forbid LECs from providing billing and collection service to itself or to its affiliate for non-subscribed service if it denies such service to unaffiliated non-subscribed service providers,¹⁷ DNSI urges that LECs should be required to provide billing and collection services in response to reasonable requests therefor until such time as a truly competitive market for such services develops. Otherwise, the public benefits of non-subscribed casual calling may be lost.

Respectfully submitted

DIGITAL NETWORK SERVICES, INC.



Mitchell F. Brecher

Stephen E. Holsten

FLEISCHMAN AND WALSH, L.L.P.

1400 Sixteenth Street, N.W.

Washington, DC 20036

(202) 939-7900

July 25, 1997
55054.1

Its Attorneys

¹⁶MCI Petition at 15.

¹⁷Id. at 14.

CERTIFICATE OF SERVICE

I, Antoinette R. Mebane, a secretary at the law firm of Fleischman and Walsh, L.L.P., hereby certify that a copy of the foregoing "*Comments of Digital Network Services, Inc.*" in Rulemaking No. 9108, was served this 25th day of July, 1997, upon the following:

VIA HAND DELIVERY:

Mr. Darius B. Withers
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
2025 M Street, NW, Room 6120
Washington, DC 20554

Mr. Robert W. Spangler
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
2025 M Street, NW, Room 6010
Washington, DC 20554

VIA REGULAR MAIL:

ITS
1231 20th Street, NW
Washington, DC 20036

Mary L. Brown
Donna M. Roberts
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, NW
Washington, DC 20006

David Alan Nall
Squire, Sanders & Dempsey
1201 Pennsylvania Ave., NW
Post Office Box 407
Washington, DC 20044
Of Counsel for MCI Telecommunications

Charles H. Helein
Robert M. McDowell
Helein & Associates, P.C.
8180 Greensboro Drive, Suite 700
McLean, VA 22102
Counsel to ACTA

James D. Ellis
Robert M. Lynch
David F. Brown
SBC Communications Inc.
175 E. Houston, Room 1254
San Antonio, TX 78205

Marlin D. Ard
Randall E. Cape
140 New Montgomery St., Room 1525
San Francisco, CA 94105
Counsel for SBC Communications Inc.

Durward D. Dupre
Michael J. Zpevak
Robert J. Gryzmala
One Bell Center, Room 3520
St. Louis, MO 63101
Counsel for the SBC Telephone Companies

James G. Pachulski
The Bell Atlantic Telephone Companies
1320 North Court House Road, Eighth Floor
Arlington, VA 22201

William J. Balcerski
The Nynex Telephone Companies
1095 Avenue of the Americas
New York, NY 10036

M. Robert Sutherland
A. Kirven Gilbert III
BellSouth Corporation
1155 Peachtree Street, NE, Suite 1700
Atlanta, GA 30309-3610

Kathryn Marie Krause
U S West, Inc.
1020 19th Street, NW, Suite 700
Washington, DC 20036


Antoinette R. Mebane 55054.1/0863